

Chapter Five

CONTEMPORARY NATIVE AMERICAN ISSUES

Health

Few statistics about Native Americans are more troubling than those that concern Indians and health. Across the board, the rate of health problems related to tobacco, illicit drugs, alcohol, obesity, diabetes and suicide for Indians and Alaska Natives are far greater than similar rates for the rest of the population.

Experts say the high incidence of health concerns in most cases can be traced back to the dire poverty, high unemployment and general state of decay on the country's Indian reservations. The social and medical services available to most tribes — which are usually underwritten by tribes and the federal government (as part of its trust responsibility to tribes) — are often overburdened and understaffed. Other services, which non-Indian communities take for granted — such as modern communication and transportation methods — are also severely lacking on tribal lands adding to what many believe is a health problem of crisis proportions on this nation's reservations.

Casino Gambling

When the Indian Gaming Regulatory Act was signed in 1988, it brought about the biggest surge to economic development in Indian Country in the last decade. But it opened the doors to misinformation about casino gambling and Native Americans.

Casinos and bingo halls are far from an economic panacea for Indians. Less than 200 of the nation's 558 federally recognized tribes are involved in the Indian gaming industry. Some tribes, such as the Navajos of Arizona, have rejected it altogether. Many others have found it to be costly and competitive. Less than 25 percent of tribal casinos account for more than half of the industry's profits. But many of the tribes that have had success with gaming have reinvested those profits back into the tribe. That money has brought about badly needed improvements in infrastructure, education, health services and cultural preservation for these tribes. Gaming revenues have also provided the seed money for other successful tribal businesses.

Meanwhile, gaming tribes operate under an umbrella of strict compliance laws. Proponents of the industry remind patrons that tribal casinos must meet both state and federal standards. And moneys generated from the industry are taxed at both the state and federal levels.

Water Rights

In *Winters v. United States*, a 1908 landmark decision handed down by the Supreme Court, it was ruled that when the federal government established reservations, it was understood that water needed for the people of those reservations was also guaranteed by the government. But

nearly 100 years later, the issue of Indians and their rights to water is still a thorny one, especially in the western half of the United States where many tribes live in dry, remote areas. Water issues were involved in many lawsuits between tribes and state authorities throughout the 20th century, but in the 1980s, the tone between parties changed as they worked towards negotiated settlements.

The Interior Department has often acted as an interested party in many of these negotiations, but finding a resolution was not always easy. In 1999, for instance, the federal government helped resolve a water dispute between the Chippewa Crees of Montana and that state's government. Those negotiations took eight years to settle. In Arizona, where 28 percent of the state is held in trust by Indian nations, two big water disputes are being negotiated. In the Little Colorado River adjudication, four Arizona tribes are negotiating with state authorities over water rights in the northeastern part of the state. In the Gila River adjudication, 11 Indian tribes in and around Phoenix are working to resolve water claims in that area. Twenty-eight thousand Native Americans are awaiting the outcome of that settlement.

Land Claims

Originally the United States was occupied by sovereign tribes that lived within established land boundaries from coast to coast. Historians believe that more than 90 percent of the United States once belonged to tribes. Today, approximately two percent — or 50 million acres — of the United States is considered tribal land. However most of these lands are situated in remote areas and are held in trust by the federal government. Another 90 million acres were originally given to tribes in treaty agreements but were later taken back by the U.S. government between the 1880s and the 1950s with no compensation to the tribes.

In an effort to compensate tribes for misappropriated land, Congress passed the Indian Reorganization Act in 1934, which authorized the Interior Department to put more federal land back into trust on behalf of the tribes. Since then approximately nine million acres have been returned to tribes as trust property, but millions of more acres are still being negotiated. Many tribes wish to acquire more land as a means of achieving economic prosperity, but corporations and individuals claim they are the rightful owners. These cases continue to work their way through the court system and probably will for years to come.

Relations with State and Local Governments

Time and again the U.S. Supreme Court and the U.S. Congress have reiterated the status of tribal governments as sovereign nations, something that was first established in the U.S. Constitution. As a result, Indian nations determine their own form of government, their own membership, their own tax structure and their own education and infrastructure systems. In short, they govern themselves and manage their own services, while the United States acts as a trustee on their behalf.

Therefore, the relations that all branches of the federal government have with Indian tribes are best compared to those relations it has with the 50 states of the union. It may impose taxes, but it

also must treat those governing bodies as elected governments and enter into government-to-government relations when doing business. By the same token, state governments must also treat tribes as separate dominions. The Supreme Court has ruled that states may only collect excise taxes on transactions between tribes and non-members. States are unable to tax tribes.

Repatriation and Reburial

For years many people have treated Indian burial grounds and the remains found there as curiosities or collector items. Any artifacts, belongings or bones unearthed from Indian burial sites were fair game for museums, private collectors, anthropologists or universities.

In 1990, the federal government adopted the Native American Graves Protection and Repatriation Act. That law has been fine-tuned during the past decade, shoring up its effectiveness in protecting Native remains. The statute allows descendants and tribes to take possession of Indian remains. It also makes it illegal to traffic in or collect such artifacts. But a gray area remains. Current laws fail to address what federal agencies, museums and individual collectors are required to do with relics that are "culturally unidentifiable." Native activists continue to demand these laws be clarified so that all uncovered remains will be turned over to Native people.

Trust Funds

In exchange for millions of acres of land and resources ceded from tribes to the federal government, the U.S. government acts as the trustee for the revenue paid to Indians or tribes for the use of tribal lands, assets and resources. This relationship has been spelled out in an array of treaties and laws dating back to the earliest days of this country, and it is an important one. In 1942, the U.S. Supreme Court said in *Seminole Nation v. United States* (316 U.S. 286) that the federal government's obligations in this relationship represents "moral obligations of the highest responsibility and trust." Allegations that the United States has mismanaged the trust fund for hundreds of Indian tribes and hundreds of thousands of individual Indians during the last century have been circulating for years. Right now, the Bureau of Indian Affairs and the Interior and Treasury departments are at the center of a six-year-old multi-billion dollar lawsuit (*Cobell v. Norton*) on behalf of thousands of Indians over that alleged mismanagement.

Education

The Bureau of Indian Affairs operates nearly 200 schools that serve 50,000 students between the ages of K-12 in 23 states. In 1997, the General Accounting Office issued a report that concluded these schools were understaffed, dilapidated and behind with regard to education curriculum development. The BIA estimates that it would cost as much as \$800 million in order to properly repair and staff the facilities.

Meanwhile the country's 32 tribal colleges, which serve 26,000 students, report they are woefully underfunded as well. The federal government subsidizes those colleges to the tune of \$3,000 per student, but educators say that is not enough. They complain their schools are unable to purchase modern computers, offer up-to-date classes or attract adequate teachers with competitive salaries.

Freedom of the Press

Although many Americans take the First Amendment for granted, there is no such guarantee of freedom of the press on Indian Land. That is because tribal governments are sovereign governments. Each of the country's more than 500 Native American tribes operate independently of the U.S. Constitution; therefore the degree of press freedom varies from one Indian nation to the next.

Tribal newspapers are quite common. A handful of those publications — which are usually published weekly — are mere mouthpieces of the tribal leaders in charge and do little to "rock the boat." But many other Indian-operated newspapers play a role identical to the one associated with the mainstream press, namely as a "fifth estate" watchdog reporting tribal activities to tribal members. In fact, it is not uncommon for newspapers to be shutdown following criticism of tribal leaders. Yet, as many tribes begin to capitalize on new technology, tribal "news" Web sites are becoming more commonplace and a more effective way to communicate.

"Per Caps"

"Per caps" — or the per capita dividends from tribal gaming operations that are paid out directly to tribal members — are also often misunderstood by non-Indians. Few know for sure how much gaming tribe members actually earn each year from their local casinos, yet many still speculate how much they receive each month, quarter or year.

In fact, few tribes actually distribute per caps. Fewer than 50 of the country's 558 federally recognized tribes actually disburse such profit-sharing checks. And although a few of those tribes do, in fact, distribute annual dividends in the "high five-figure range," many others parcel out far more conservative amounts. (One Montana tribe dispenses \$50 each Christmas to its enrolled members.) Under federal law, those casino profits are shared among members only after tribal needs in education and health are met. And once the bonuses are delivered, the federal government heavily taxes that money, approximately 40 percent each year.

Enrollment

Few things are as important to individual American Indians as enrollment within his or her tribe. Enrollment means both the tribal leaders and the federal government recognize that person as a member of a particular Indian nation. Ultimately tribal law governs who is recognized as a member, and those tribal rosters are turned over to the Bureau of Indian Affairs. In instances where the federal government needs to confirm membership to resolve legal matters, it relies on a blood-quantum to confirm an Indian bloodline. It is a long-standing practice that remains controversial because it does not take tribal customs or laws into consideration.

In order to qualify for federal assistance in areas of housing, education and health insurance, individual Indians must be included on tribal rosters. But there is more at stake than federal entitlements. The right to participate in tribal politics is tied to membership, as is the right to share in tribal profits. Most importantly though, Native Americans say, their sense of identity and "belonging" goes hand in hand with tribal enrollment.